



PAPER A

Purpose: For Decision

Committee report

Committee	LICENSING (DETERMINATIONS) SUB-COMMITTEE
Date	19 JANUARY 2012
Title	TO DETERMINE AN APPLICATION FOR A PREMISES LICENCE UNDER SECTION 17 OF THE LICENSING ACT 2003, FOR MARSTONS PLC, MERRIE GARDENS FARM, NEWPORT ROAD, LAKE, ISLE OF WIGHT, PO36 9PE
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BACKGROUND

1. A premises licence issued under section 18 of the Licensing Act 2003 authorises the use of premises for the sale or supply of alcohol, the provision of regulated entertainment and the provision of late night refreshment.
2. An application for a premises licence was submitted to the licensing authority on 21st November 2011 for new premises on the site of Merrie Gardens Farm, Newport Road, Lake, Sandown, Isle of Wight. The application is attached at appendix A.
3. The applicant is required to submit a copy of the application to Responsible Authorities, as defined in the Licensing Act, and to place a notice of the application at the premises and in a local newspaper.
4. Only certain persons may make representations in respect of the application and if these are not resolved the licensing authority must hold a hearing to determine the application.

CONSULTATION

5. The Licensing Act 2003 prescribes a twenty eight day consultation period, commencing the day after the application has been correctly served.
6. This application for a premises licence was received on 21st November 2011. The application was advertised in the Isle of Wight County Press, at the premises and on the Council's web site. The consultation period ended on 19th December 2011.

7. The outcome of the consultation in respect of this application is as follows:

Responsible Authorities

Children's Services	No valid representation
Environmental Health	Representation received
Fire and Rescue Service	No valid representation
Trading Standards Service	No valid representation
Planning Services	Representation received
Police	Representation received

A representation has been received from the Environmental Health department stating that they have no adverse comments to make on this application.

A representation has been received from the Planning department. No comments have been raised however they have commented that the planning permission has yet to be determined.

A representation has been received from the Police which is attached at Appendix B. The police have concerns regarding the hours of the premises being open to bona fide guests of residents, as well as requesting a number of conditions which they would like to be attached to the licence, should the Committee be minded to grant the licence.

Interested Parties

8. One valid representation has been received from an interested party (Appendix C) relating to the licensing objectives:

- Prevention of public nuisance

The local resident has concerns relating to noise which may be generated by the lateness of the hours of the premises, and further noise which may be generated by people leaving at the time stated in the application.

FINANCIAL/BUDGET IMPLICATIONS

9. Broadly, Council expenditure on licensing matters, and specifically those administered and enforced through Planning and Regulatory Services, balances income generated from fees.

LEGAL IMPLICATIONS

10. The 28 day consultation period ended on 19th December 2011. Schedule 1 of the Licensing Act (Hearings) Regulations 2005 states that the application must be determined within 20 working days of the end of the consultation period.

National Guidance

11. The following sections from the national guidance issued under section 182 of the Licensing Act 2003 are considered relevant to this application:
12. Each application on its own merits –
 - 1.15 Each application must be considered on its own merits and any conditions attached to licences and certificates must be tailored to the individual style and characteristics of the premises and events concerned. This is essential to avoid the imposition of disproportionate and overly burdensome conditions on premises where there is no need for such conditions. Standardised conditions should be avoided and indeed, may be unlawful where they cannot be shown to be necessary for the promotion of the licensing objectives in any individual case.
13. Avoiding duplication of other legal requirements
 - 1.16 The licensing authority should only impose conditions on a premises licence or club premises certificate which are necessary and proportionate for the promotion of the licensing objectives. If other existing law already places certain statutory responsibilities on an employer or operator of premises, it cannot be necessary to impose the same or similar duties on the premises licence holder or club. It is only where additional and supplementary measures are necessary to promote the licensing objectives that necessary, proportionate conditions will need to be attached to a licence.
14. Hours of opening
 - 1.19 The four licensing objectives should be paramount considerations at all times and licensing authorities should always consider the individual merits of a case.
15. Related legislation and strategies
 - 1.27 In addition, when considering a new premises licence or following reviews that have identified problems with a particular premises, licensing authorities may consider imposing conditions as appropriate, such as preventing customers from taking open containers outside the premises or installing CCTV. However, any conditions imposed must not be aspirational and must be within the control of the licensee. For example, a condition may require premises to adopt a particular dispersal policy, but a licensee cannot force customers to abide by it.
16. Public nuisance
 - 2.32 The 2003 Act requires licensing authorities (following receipt of relevant representations) and responsible authorities, through representations, to make judgements about what constitutes public nuisance and what is necessary to prevent it in terms of conditions attached to specific premises licences and club premises certificates. It

is therefore important that in considering the promotion of this licensing objective, licensing authorities and responsible authorities focus on impacts of the licensable activities at the specific premises on persons living and working (including doing business) in the vicinity that are disproportionate and unreasonable. The issues will mainly concern noise nuisance, light pollution, noxious smells and litter.

- 2.33 Public nuisance is given a statutory meaning in many pieces of legislation. It is however not narrowly defined in the 2003 Act and retains its broad common law meaning. It is important to remember that the prevention of public nuisance could therefore include low-level nuisance perhaps affecting a few people living locally as well as major disturbance affecting the whole community. It may also include in appropriate circumstances the reduction of the living and working amenity and environment of interested parties (as defined in the 2003 Act) in the vicinity of licensed premises.
- 2.34 Conditions relating to noise nuisance will normally concern steps necessary to control the levels of noise emanating from premises. This might be achieved by a simple measure such as ensuring that doors and windows are kept closed after a particular time in the evening to more sophisticated measures like the installation of acoustic curtains or rubber speaker mounts. Any conditions necessary to promote the prevention of public nuisance should be tailored to the style and characteristics of the specific premises. Licensing authorities should be aware of the need to avoid unnecessary or disproportionate measures that could deter events that are valuable to the community, such as live music. Noise limiters, for example, are very expensive to purchase and install and are likely to be a considerable burden for smaller venues.
- 2.35 As with all conditions, it will be clear that conditions relating to noise nuisance may not be necessary in certain circumstances where the provisions of the Environmental Protection Act 1990, the Noise Act 1996, or the Clean Neighbourhoods and Environment Act 2005 adequately protect those living in the vicinity of the premises. But as stated earlier in this Guidance, the approach of licensing authorities and responsible authorities should be one of prevention and when their powers are engaged, licensing authorities should be aware of the fact that other legislation may not adequately cover concerns raised in relevant representations and additional conditions may be necessary.
- 2.36 Where applications have given rise to representations, any necessary and appropriate conditions should normally focus on the most sensitive periods. For example, music noise from premises usually occurs from mid-evening until either late evening or early morning when residents in adjacent properties may be attempting to go to sleep or are sleeping. In certain circumstances, conditions relating to noise in the immediate vicinity of the premises may also prove necessary to address any disturbance anticipated as customers enter and leave.

Implications under the Crime and Disorder Act 1998

17. Members are advised that without prejudice to any other obligation imposed on it, it shall be the duty of each authority to which this section applies to exercise its functions with due regard to the likely effect of the exercise of those functions on, and the need to do all that it reasonably can to prevent, crime and disorder in its area.

Human Rights

18. Members are advised that this application must be considered against the background of the implications of the Human Rights Act 1998.
19. There are three convention rights, which need to be considered in this context:

Article 6 - Right to a Fair Trial

20. In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law.
21. It has been held that the fact that there is a right of appeal to the Magistrates' Court from any decision of the Licensing Authority is sufficient to make the Council's licensing system compliant with the convention rights.

Article 8 - Right to Respect for Private and Family Life

22. Everyone has the right to respect for his private and family life, his home and his correspondence. In the case of article 8 there shall be no interference by a public authority with the exercise of this right except as such in accordance with the law and is necessary on a democratic society in the interests of national security, public safety or the economic wellbeing of the country, for the prevention of disorder and crime, for the protection of health or morals or for the protection of the rights and freedoms of others.

Article 1 - First Protocol Protection of Property

23. Every natural or legal person is entitled to the peaceful enjoyment of his possessions. In the case of Article 1 of the first protocol it states that "no one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and the general principles of international law. The preceding provisions (of which articles 6 and 8 are but two) shall not however in any way impair the right of the state to enforce such laws as it deems necessary to control the use of the property in accordance with general interest or to secure the payment of taxes or other contributions or penalties".
24. The Licensing Authority acknowledges the right of businesses in its area to operate, but equally acknowledges the fact that this must be balanced against the rights of residents not to be disturbed by unreasonable noise and nuisance caused by licensed premises. The Sub-Committee needs to be clear as to the rights granted and the need to ensure that the reasons given for any

interference are proportionate and in accordance with the Council's legitimate aim.

25. It is considered that the following paragraphs from the Licensing Authority's Statement of Licensing Policy 2011 – 2014 have a bearing upon the application. Members' attention in respect of this particular application is drawn to:

Paragraph 1	Introduction	All
Paragraph 2	Licensing Objectives	All
Paragraph 3	Licensable Activities	All
Paragraph 4	Integration of Strategies and Other Legislation	All
Paragraph 5	Approach to Licensing Applications	All
Paragraph 6	Cumulative Effect	N/A
Paragraph 7	Representation, Reviews and Appeals	7.1, 7.6 – 7.8
Paragraph 8	Enforcement	N/A
Paragraph 9	Operating Schedules	9.11 – 9.19

EQUALITY AND DIVERSITY

26. The council as a public body is subject to general and specific duties under equality and diversity legislation and as such has a duty to go beyond prohibition and publish and promote service improvements by engaging with the local community to assess the impact of any decision on the local community. As a requirement under the Equalities Act 2010 and further improvements to diversity legislation all local authorities are required to impact assess their services, policies/strategies and decisions with regard to diversity legislation – race, disability, gender, age, sexual orientation and religion/belief. (NB: this list is not exhaustive, it does cover current legislation but future development could also include poverty and social inclusion as an example).
27. The equality impact assessment looks at how a service promotes equality and diversity to ensure legal compliance and that the services we provide and the decisions that we make meet the needs of our local community.
28. It is believed that the equality impact assessment will not be affected by the grant or refusal of this premises licence application.

OPTIONS

29. Option 1: Grant the licence as per the application.
- Option 2: Grant the licence as per the application with conditions suggested by the police, and any additional conditions that the Sub-Committee deem reasonable and proportional to promote the licensing objectives.
- Option 3: Refuse the whole or part of the application.

RISK MANAGEMENT

30. With regard to Option 1: To grant the licence as per the application may not adequately mitigate the risk of public nuisance arising from regulated entertainment, and associated nuisance and disorder from the customers leaving the premises, should the Sub-Committee deem this to be a likely outcome. The decision not to address the concerns raised may subsequently be appealed by those parties who have made representations.
31. With regard to Option 2: The risk of crime and disorder or nuisance being attributed to the premises could be reduced by attaching conditions to the licence to promote the licensing objectives. Conditions must be proportionate and any decision to attach additional conditions may be appealed by all parties if they believe the conditions are not necessary to promoting the licensing objectives.
32. With regard to Option 3: If the Sub-Committee decides to refuse all or part of the application, the decision may be appealed by all parties.

EVALUATION

33. The Sub-Committee is obliged to determine this application with a view to promoting the licensing objectives, which are:
 - a. The Prevention of Crime and Disorder
 - b. The Prevention of Public Nuisance
 - c. Public Safety
 - d. The Protection of Children from Harm
34. Members should determine the application in accordance with section 18 of the Licensing Act 2003 and The Licensing Act (Hearings) Regulations 2005.
35. In making its decision, the Sub-Committee is also obliged to have regard to national guidance and the Council's own Statement of Licensing Policy.
36. The Sub-Committee must have regard to all of the representations made and the evidence it hears.
37. This application has undergone sufficient consultation as prescribed under the Licensing Act 2003. With the exception of those stated, none of the responsible authorities under the Act have made representations to this application.
38. If the Sub-Committee do not address the concerns that have been raised, the risk of an appeal by the objectors may increase.
39. The risk of public nuisance could be reduced by attaching conditions to the licence. However, any conditions must be proportionate and the decision to attach conditions may be appealed by all parties but may increase the risk of an appeal by the applicant.

40. If the sub-committee rejects all or part of the application it should do so having had regard to all the evidence and be satisfied that to do so would not adversely impact on the licensing objectives. This decision may be appealed by all parties.

RECOMMENDATION

41. Members should determine the application in accordance with section 18 of the Licensing Act 2003 and The Licensing Act (Hearings) Regulations 2005.

APPENDICES ATTACHED

- [Appendix A](#) Application for a premises licence under section 17 of the Licensing Act 2003
[Appendix B](#) Representations received from the Police.
[Appendix C](#) Representation received from an interested party.

BACKGROUND PAPERS

- Isle of Wight Council Licensing Authority Statement of Licensing Policy 2011 – 2014.
http://www.iwight.com/living_here/environment/environmental_health/images/LICENSINGPOLICY2011-2014.pdf

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